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1 MONTGOMERY COUNTY, MARYLAND

2 MONTGOMERY COUNTY COUNCIL

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4 In the Matter of:

5 Bill 71-81, Collective Bargaining,)
6 Police Officers)

7 Council Hearing Room
8 100 Maryland Avenue
Rockville, Maryland 20850

9 Thursday,
10 January 14, 1982

11 The above-entitled matter came on for hearing,
12 pursuant to notice, at 8:10 p.m.

13 BEFORE: NEAL POTTER, President

14 MICHAEL L. GUDIS, Vice President

15 SCOTT FOSLER

16 ESTHER GELMAN

17 DAVID SCULL

18 RUTH SPECTOR

19 ROSE CRENCA

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P R O C E E D I N G S

PRESIDENT POTTER: Good evening ladies and gentlemen.

This is a public hearing on Legislative Bill No. 71-81, Collective Bargaining for Police Officers. The bill provides the framework for conducting collective bargaining between the county government and police officers in specified classifications and includes establishment of a permanent umpire to implement certain provisions of law; certification procedures for employee organizations; subjects which are appropriate and inappropriate for bargaining; impasse procedures; prohibited practices; provisions prohibiting strikes and lockouts; use of official working time of employees; and the effect of prior enactments. This legislation amends Chapter 33 of the Montgomery County Code, 1972, as amended.

Because of the snow emergency and resulting difficulties and uncertainties about the holding of the hearing this evening, the Council has arranged a continuation of this hearing on Monday, January 25, starting at 9 p.m. The late hour is because we have had to continue another hearing from last night to that night also. They will proceed from 7:30 until 9. So we will continue this hearing at 9 p.m. on Monday, January 25, and we will hear additional speakers who have signed up, but who do not appear tonight.

Additional Council members should be in attendance at that time. Those Council members who are absent tonight

1 will read the record being transcribed for the use of the
2 staff.

3 The County Executive witnesses who were to lead
4 off the hearing this evening have called in to say that
5 because one of them has to come from Baltimore, they feel
6 their presentation should be made on the 25th. So we will
7 hear them at that time rather than tonight.

8 A work session on this legislation has been scheduled
9 for Thursday, February 4, 1982, at 3 p.m. Now because of
10 the continuation of the hearing we may find it necessary
11 to postpone work session. We may not have all the necessary
12 papers ready in time for the work session. So those who
13 want to come for that work session, please call into the
14 Council office to check whether it is proceeding as scheduled.

15 The record on this hearing will remain open until
16 the close of business on Thursday, January 28th, in case
17 people want to submit additional written comments for our
18 use.

19 The first of the speakers whom I have listed tonight
20 for appearance on this list is J. David Eberly, speaking
21 for the Montgomery County Education Association. In case
22 Mr. Eberly doesn't run long enough to show the time limiting
23 machine, I want to explain it to you. This gray box here
24 shows the amber light when the speaker has 30 seconds left
25 to go. When the 30 seconds are up, the red light appears,

1 that means your time is up. I know Mr. Eberly is familiar
2 with it because he has appeared before us many times before.

3 STATEMENT OF J. DAVID EBERLY, PRESIDENT,
4 MONTGOMERY COUNTY EDUCATION ASSOCIATION

5 MR. EBERLY: Good evening, Mr. Potter, I am David
6 Eberly, President of the Montgomery County Education Associa-
7 tion. Our organization represents all nonsupervisory pro-
8 fessional employees of the Montgomery County Public School
9 system in collective bargaining and related matters.

10 I appear this evening in support of the police
11 labor relations bill providing for collective bargaining
12 for Montgomery County police officers. Formalized negotiations
13 for Maryland teachers began in 1968 as a result of legisla-
14 tion sought by our members. We believe that it is a right,
15 not only of teachers, but of all public employees, to share
16 with our colleagues in the private sector the ability to
17 exercise an equal voice in the determination of those factors
18 affecting their employment.

19 Private sector bargaining, though taken for granted
20 in many areas of our nation evolved slowly through years
21 of struggle, strife and experimentation. Among the lessons
22 that public management has or should have learned is that
23 employees, both professional and nonprofessional, take as
24 an essential ingredient of their employment the rights out-
25 lined for workers by the United States Congress in 1935,

1 namely, that they may organize a union of their choice and
2 bargain collectively.

3 Unfortunately the nuances of such union organizing
4 have escaped the understanding and acceptance in some areas
5 of the nation, and therefore the urgency to organize and
6 bargain is often accepted only reluctantly or not at all
7 by government.

8 I genuinely hope that local government in Montgomery
9 County continues to grow in its acceptance of these principles
10 and establishes, not only for the police, but for all public
11 employees procedures to implement these efforts.

12 Consequently I wish to support the positions taken
13 by our sisters and brothers in the Montgomery County Police
14 Department as they through the Fraternal Order of Police
15 have successfully sought and overwhelmingly won our public's
16 understanding and support for bargaining efforts. We endorse
17 the Fraternal Order of Police position and their statement
18 and urge your approval of the legislation before you with
19 the amendments supported by the FOP.

20 Specifically I would like to speak to three issues
21 addressed by the legislation. Number one, agency shop. Among
22 those illustrations of union security that are most sought
23 after and misunderstood is the issue of agency shop. This
24 legislation provides the ability of the designated exclusive
25 bargaining agent to negotiate an agency shop agreement. As

1 defined by the bill, agency shop will provide the bargaining
2 agent the financial security to be able to operate outside
3 the realm of competitive activities usually present where
4 two or more unions vie for representation. It is not only
5 good for the union in that it assures a full income of financial
6 support, it is good for management as well. Unions which
7 must continually show their bargaining strength by aggressive
8 acts of confrontation and militancy are often in a position
9 of needing to take actions for internal political purposes
10 rather than for adversarial strategies and bargaining. In
11 plain language, the presence of agency shop brings a period
12 of labor peace and enables management and labor to be about
13 the all-absorbing job of bargaining and administering a contract.

14 Two, ratification and funding. The experience
15 of teacher bargaining in our county presents a model that
16 should be avoided entirely. In order for legitimate good
17 faith bargaining to proceed, there needs to be an ability
18 for a union to bargain directly with the party who can commit
19 itself to a contract. In our situation, we bargained with
20 a team who must answer to the Superintendent of Schools,
21 who must refer to the Board of Education for ratification,
22 who must defer to the County Executive for review, who must
23 submit to the County Council for final fiscal funding. This
24 is an absurd relationship.

25 At any point in our bargaining process our

1 constituents could be successful and yet be defeated by a
2 higher reviewing agent. Such a process creates a time bomb
3 calculated to harass and intimidate workers and their bar-
4 gaining agent rather than provide a mechanism for reasonable
5 resolution of negotiations demands.

6 I urge you to provide the ability to bargain and
7 ratify at one level. Simplify the process now when you have
8 the opportunity rather than risk a crisis by dividing
9 authority as was done in our situation.

10 Scope of bargaining. It is my firm belief that
11 nothing should be restricted from the scope of negotiations.
12 The result of bargaining as it has evolved transfers to a
13 joint contractual relationship those powers and decisions
14 formerly held exclusively by management. It is natural for
15 management to want to retain as much power as it can. If
16 we accept the fact that it is good and healthy for bargaining
17 to exist, then we should also accept that the framework of
18 the bargaining should be based on the skills and exigencies
19 of the process at any given time and not by law.

20 I have about three sentences yet if you permit
21 me to finish. Employees have a right to bargain and discuss
22 anything that is of concern to them, and they should be able
23 to reach agreement and reduce to writing all matters that
24 are mutually acceptable. Neither management nor labor should
25 be able to hide behind a statute that restricts their ability

1 to bargain. Neither can any legislative function anticipate
2 for all time what restrictions will effectively guide the
3 process. Today's laws may bind the hands of tomorrow's
4 negotiators to the end that labor stability and harmony are
5 disrupted rather than affirmed.

6 I thank you, Mr. President, for your consideration,
7 and urge your attention to these points as you adopt this
8 legislation for police labor relations in Montgomery County.

9 PRESIDENT POTTER: Thank you, Mr. Eberly.

10 (Applause)

11 PRESIDENT POTTER: You certainly raise some important
12 fundamental points that we will certainly be considering
13 in our work sessions and in the passage of the bill.

14 Let me ask you one question. I see the point of
15 most of them, but you raised the question about buckpassing
16 in effect, or higher agent as you call it, in the bargaining
17 with the School Board. Now I don't think the Executive or
18 Council have ever undertaken to change the bargained contract
19 between the School Board and the MCEA, have they? I think
20 Mr. Gleason on one or two occasions said we could take out
21 \$5 million or whatever it was by just not funding. I don't
22 think the School Board ever consented to that, nor did he
23 have authority to order that.

24 MR. EBERLY: There was one experience which occurred
25 before I became president. I think it was perhaps five,

1 six, seven years ago, where in my recollection I believe
2 in a subsequent year of a multiple year contract a salary
3 increase of something on the order of 10 percent would have
4 resulted in deferring to the cost of living index. Either
5 the County Executive recommended about funding of a half
6 of that, or the County Council at that time funded only about
7 half of it, I am not aware of where that initiative came
8 from. My recollection is that the ultimate increase for
9 that year was approximately half, however, of what the nego-
10 tiated contract would have called for.

11 PRESIDENT POTTER: Did the contract provide for
12 that contingency, that if it were not all funded that the
13 negotiated increase would be reduced, or was it renegotiated?
14 I don't quite understand you.

15 MR. EBERLY: That I don't know because I was not
16 active in the leadership of our union at that time. My guess
17 is that it would have provided for the opportunity at renego-
18 tiation if funding by the Council was not forthcoming. I
19 have no recollection of what ultimately came about.

20 PRESIDENT POTTER: My understanding is that the
21 contract is binding, although like any contract I guess it
22 can be renegotiated, and that if the Board of Education has
23 undertaken a certain salary scale that that is their contract,
24 subject only to mutual consent to be negotiated in view of
25 unforeseen circumstances or something, such as a smaller

1 funding than expected with consequent impacts on the employ-
2 ment program or the salary scales.

3 I realize that the school personnel may argue from
4 what the Council may appropriate. Unless the contract itself
5 is made contingent on that, that is only an argument.

6 MR. EBERLY: I think there are a couple of points
7 that in our situation at least that would affect this. Number
8 one, for all practical purposes, if the total number of dollars
9 appropriated by the Council for professional salaries would
10 not cover the salary scale for the people that are involved,
11 then the Board of Education has a choice as to whether or
12 not it will cut back in the number of employees in our unit
13 or else unilaterally seek to cut the salary or enter into
14 renegotiations.

15 The only point I am trying to make is that it
16 weakens almost to the point of foolishness the whole bargaining
17 process if management which bargains with labor bargains
18 any part of the contract and doesn't have the ultimate authority
19 to follow through or to fund that.

20 Now the situation which we face in this bill is
21 a little bit different from ours because we are subject yet
22 to another level of government, the Board of Education. But
23 the only point I am trying to make is I think a rather simple
24 one, and that is that we believe that public employees need
25 to bargain with whatever organ of management or government

1 has the authority to deliver on what they promise.

2 PRESIDENT POTTER: It seems to me that a natural
3 analogy could be the kind of situation in which United Auto
4 Workers now find themselves. They have contracts with Ford,
5 General Motors and Chrysler and American Motors. But if
6 the market doesn't supply the money, something has to be
7 done about it. UAW and General Motors I think are sitting
8 down together and trying to decide what they are going to
9 do about it. General Motors I think recognizes that they
10 have a contract and there is a basis for looking at the changes
11 in the Consumer Price Index and all the rest to negotiate
12 with the union, but also to recognize that there are other
13 impacts that they don't have control over.

14 MR. EBERLY: Well, that is true, but certainly
15 when you look at the private sector initially when that con-
16 tract was bargained it was ratified by the union and then
17 ratified by management. Management initially was able in
18 the private sector to deliver without any question at all
19 what the salary increases provided for because management
20 in the private sector did not then need to rely on any kind
21 of ratification by the stockholders. This is kind of an
22 extraordinary situation I think that they are in now.

23 PRESIDENT POTTER: The market problems of recession
24 and high interest rates and competition can hit them any
25 time.

1 MR. EBERLY: I understand.

2 PRESIDENT POTTER: I am just saying that similarly
3 I think the School Board has to recognize there are other
4 forces in it, although the Council and they feel that it
5 is a valid contract, we have to look at the consequences.

6 MR. EBERLY: Well, I am delighted to put in my
7 plug for our own problem here, although that is not initially
8 why I came.

9 PRESIDENT POTTER: I think all bargaining, as I
10 am trying to indicate, is under some shadow and the ultimate
11 power to deliver is not something that human institutions,
12 public or private, can guarantee. To its best effort.

13 MR. EBERLY: Well, to the extent that I believe
14 the structure can provide that, I urge the Council to provide
15 for bargaining on the most fundamental level.

16 PRESIDENT POTTER: Thank you.

17 MR. EBERLY: Thank you.

18 PRESIDENT POTTER: Our next witness is Kathleen
19 Dolan speaking for the Employees Organization Task Force.
20 Is she here? Kathleen Dolan? I don't see her.

21 All right, then we will go on to Jim Goeden from
22 the Bethesda-Chevy Chase Chamber of Commerce.

23 STATEMENT OF JIM GOEDEN, BETHESDA-
24 CHEVY CHASE CHAMBER OF COMMERCE

25 MR. GOEDEN: President Potter, my name is Jim

1 Goeden. I am speaking this evening for the Bethesda-Chevy
2 Chamber of Commerce.

3 The Chamber is most supportive of the excellent
4 job done by the Montgomery County Police Department. We
5 realize that their jobs often call for actions that put their
6 safety in jeopardy and that they are often called upon to
7 work long hours to protect the lives and property of our
8 citizens and our businesses. We further believe that because
9 of the nature of their work, the county government should
10 go the extra mile to assure that our police officers are
11 adequately compensated.

12 The Chamber, however, is concerned about the issue
13 before you. The Chamber was opposed to the Charter amendment
14 that was the source of this proposal because of that portion
15 of the Charter amendment that provided for binding arbitra-
16 tion. We are not in any opposed to collective bargaining,
17 but we are opposed to binding arbitration.

18 We sincerely believe that because of the ethically
19 questionable campaign to present this issue as a no-strike
20 amendment before the last election, many of our voters were
21 deceived. We also believe that if the question of binding
22 arbitration were put to the voters of the county as a separate
23 issue, it would be rejected overwhelmingly.

24 We do not feel that the Council is under a mandate
25 to pass legislation implementing the Charter amendment because

1 of the recent Court of Appeals decision requireing charter
2 amendments to be limited to the structure of government.

3 Another avenue the Council may wish to consider
4 is to separate the binding arbitration question from the
5 remainder of the amendment and place it on the ballot for
6 the next election. We believe that elected officials and
7 only elected officials should be responsible for the spending
8 level of our county government. We feel that binding arbitra-
9 tion can, in some cases, turn this responsibility over to
10 an expert from out of town with a black briefcase.

11 We are also concerned about two additional proba-
12 bilities. First, that the wage settlement for police officers
13 will set standards for the remainder of the county government
14 employees, and second, that passage of this bill will encourage
15 other government employees to seek a Charter amendment of
16 their own.

17 The pressure on local government to reduce spending
18 in the next few years will be intense. It is essential during
19 that period for elected officials to be in complete control
20 and responsible for their actions.

21 Thank you.

22 PRESIDENT POTTER: Thank you, Mr. Goeden. You
23 certainly raise important legal points and questions which
24 the Council will consider.

25 The next witness is Tom Israel, speaking as an

1 individual.

2 STATEMENT OF THOMAS S. ISRAEL, AN
3 INDIVIDUAL

4 MR. ISRAEL: Mr. Potter, I am Tom Israel. I reside
5 at 3211 Wake Drive in Kensington.

6 Both as a concerned private citizen and as a former
7 member of the Board of Education with eight years of experience
8 in collective bargaining issues, I welcome the chance to
9 comment on Bill 71-81. I will confine my comments to Section
10 33-81, Impasse Procedure, which provides for binding interest
11 arbitration by an impasse neutral if the parties fail to
12 reach agreement on a new contract. However, I want to first
13 place my comments in context by stating that I do not object
14 to collective bargaining by public employees, and strongly
15 believe that binding arbitration of grievances arising from
16 administration of the contract is a fair and valuable approach
17 to resolution of such disputes.

18 Having said that, I do strongly object to third
19 party binding arbitration of bargaining impasses for the
20 following reasons.

21 First, binding interest arbitration tends to destroy
22 the collective bargaining process because there is little
23 incentive for an employee group to settle short of an impasse
24 knowing there is a very good chance that an arbitrator will
25 decide in its favor on economic issues.

1 Second, binding interest arbitration would have
2 the effect of placing substantial control of the county's
3 fiscal affairs in the hands of a nonelected person who probably
4 would not even be a resident of the state, much less the
5 county. With all of the financial grief that arbitrators
6 have caused local governments in this area because of their
7 decisions on Metro contracts, I cannot imagine that this
8 Council would let that happen to Montgomery County in this
9 instance.

10 Third, it is highly likely that economic settlements
11 imposed by the arbitrator under Section 33-81 of this bill
12 would quickly become the minimum negotiating positions of
13 all other county employees. Why should any employee associa-
14 tion bargain seriously until they see what the police get?

15 Fourth, I call your attention to paragraph (b) (7)
16 of this section which is on page 22. It is totally unclear
17 whether the Council retains the right to reduce the arbitrator's
18 decision as it does in the case of an agreement reached
19 voluntarily. Even if paragraph (b) (7) is clarified to make
20 it crystal clear that the Council retains final authority
21 via its legislative and appropriation powers, I would oppose
22 binding interest arbitration because the process tends to
23 bring extra pressure on the Executive and Council to settle
24 at a higher level than is fiscally prudent.

25 Finally, I oppose the binding interest arbitration

1 provision because it is quite evident that the public did
2 not know what it was buying when it voted on the Charter
3 amendment a year ago. Every lay citizen I have talked to
4 has been unaware of this provision and is outraged when the
5 potential implications are explained. Frankly, they think
6 they have been had on this matter, and I would have to agree
7 based on the paucity of efforts to explain this issue to
8 them during the last election season.

9 Fortunately, I think there is a reasonable solution
10 to this matter to which few could object. I suggest that
11 the Council sever Section 33-81 from this bill and submit
12 binding interest arbitration to the voters in the November
13 election. You can proceed to approve and implement the remainder
14 of the bill and collective bargaining with the police could
15 commence on November 1st as scheduled. The electorate will
16 settle the binding interest arbitration issue in early November,
17 and if they approve the Council will have time to pass neces-
18 sary implementing legislation before the first impasse could
19 occur in late January.

20 Taking the step I have just suggested would have
21 the great virtue of highlighting the issue for voters, and
22 I guarantee there will be more information for them to base
23 a decision on this time. If the electorate approves binding
24 interest arbitration, then at least they could not in fairness
25 blame you for the consequences.

1 As a last thought, three years ago I co-chaired
2 a coalition of organizations which barely defeated the pro-
3 posed Trim Charter amendment by a margin of about 5000 votes
4 out of more than 200,000 cast. The Trim concept would have
5 been bad public policy and would have hit hard at public
6 employees. Among other things, it would have made collective
7 bargaining largely irrelevant.

8 I oppose binding interest arbitration because it
9 too would be bad public policy, and because its adoption
10 could well be the catalyst which produces another Trim
11 amendment. I urge you to let the voters decide this important
12 public policy issue in November.

13 Thank you.

14 PRESIDENT POTTER: Could I ask the audience to
15 please be still. This is a hearing and not a rap session.
16 I know how many of you feel. I know what you want. The
17 Council has to consider the issues in terms of public policy,
18 and we all owe courtesy and order to the public agents who
19 are trying to carry on the public's business.

20 Mr. Israel, I think you raise the important and
21 very difficult questions. We will try to find our way
22 through them. Surely there are severe conflicts between
23 some of the policy issues you raise and the legislation
24 indicated by the Charter amendment. I appreciate your high-
25 lighting those in simple language.

1 You have an attachment to your testimony from the
2 National School Board Association. We will enter that in
3 the public record.

4 MR. ISRAEL: Thank you, Mr. Potter.

5 PRESIDENT POTTER: The next witness is Jean Marie
6 Elkins. Is she here? Jean Marie Elkins. Absent. Perhaps
7 we will hear her on the 25th.

8 Next is Leo Marchetti for the National Fraternal
9 Order of Police.

10 (Applause)

11 STATEMENT OF LEO MARCHETTI, NATIONAL

12 PRESIDENT, FRATERNAL ORDER OF POLICE

13 MR. MARCHETTI: Mr. Chairman, I am Leo Marchetti.

14 I am the National President of the Fraternal Order of
15 Police, and I am here to give some type of expert input into
16 what binding arbitration does. Being from the Commonwealth
17 of Pennsylvania and having worked in the arbitrations legis-
18 lation in 1967 and 1968, I think I can speak with some
19 authority.

20 I am sure that no matter where we speak of binding
21 arbitration for municipal employees, there is a fear that
22 someone is going to come in and give away the store. But
23 if you look at the history in the states that do have binding
24 arbitration, you will find that that is not happening.
25 Specifically in the state of Pennsylvania where I am from

1 the City of Philadelphia, a first class city, with binding
2 arbitration, makes the lowest police wages of any city in
3 that classification. In the City of Pittsburgh, which is
4 ranked in population 21st, we have just completed an arbitra-
5 tion, and we, incomewise we rated 29th in the nation.

6 So the bugaboo that by giving our public servants
7 the opportunity to go into a binding arbitration for wages
8 has not caused the financial blight to the community that
9 many people would want us to believe. I have listened to
10 two individuals make speeches here of threats of what could
11 happen in Montgomery County if this law were to pass. I
12 personally don't believe that the people of your county are
13 that naive that they didn't know exactly what they were voting
14 for when they were voting.

15 (Applause)

16 MR. MARCHETTI: In the referendum election of 1967
17 and 1968 in Pennsylvania, we were able to get better than
18 85 percent of the electorate to vote in favor of giving binding
19 arbitration to their police and firemen. It has been held
20 in good stead. We have had total labor peace in the Common-
21 wealth of Pennsylvania. There is a good rapport between
22 policemen, firemen, and their communities since the inception.
23 This year, 1981, arbitration season has just ended with the
24 lowest amount of arbitrations ever in the Commonwealth, and
25 basically the answer is that management and the police officers

1 have learned to respect each other. They go into a bargaining
2 session. It is not like it used to be, hat in hand. You
3 go in and you deal for the bargainable issues that you feel
4 as a police officer you have a right to have. Most policemen
5 don't ask for that much out of life. They certainly don't
6 come on the police department to become wealthy. They come
7 on because they have a dire need of giving service to their
8 community. And they live that life. And in the majority
9 of cases they give much more than they receive.

10 I can say if I gave a copy of the Arbitration Act
11 of 1968 and I left enough for your total Council when they
12 are all present. It is a very simple act.

13 PRESIDENT POTTER: We will distribute it and enter
14 it into the record.

15 MR. MARCHETTI: Thank you. It is not a complicated
16 piece of paper, and after 13 years there has not been a change.
17 If I as a police officer were asked what changes I want to
18 make in that piece of paper, that document after 13 years
19 of proven testing, I would say, number one, I think that
20 we should get a specific definition for the word "policeman"
21 simply because, as I see in your text, you are speaking of
22 just patrolmen. In Pennsylvania we deal for all policemen,
23 the Fraternal Order of Police deals for all police officers.
24 And the only police officers who are not covered are the
25 administration. The superintendents aren't involved, the

1 assistant superintendents aren't involved, but everybody
2 under Civil Service is under that arbitration act. And we
3 have found no problems with that.

4 The only other decision that has ever been handed
5 down is a decision that was made by the Pennsylvania Labor
6 Board in small departments which you people here do not have,
7 but in small departments of 10 or less men the chiefs are
8 included in the arbitrations. If you have over 10 men, the
9 chief is classified administration.

10 I would like to have had your total Council here
11 so that I could have answered many of your questions. I
12 am sure that you probably have many. But I say to you in
13 the absence of the rest, thank you for coming. It was a
14 terrible night, but at least somebody has showed up because
15 of the interest in this legislation. And I thank you for
16 appearing. I thank the people in the audience that feel
17 that this is a worthwhile endeavor, and I would hope the
18 Council of Montgomery County sees fit to award police officers
19 what the taxpayers, the voters of Montgomery County have
20 asked us to do.

21 Thank you.

22 (Applause)

23 PRESIDENT POTTER: Thank you, Mr. Marchetti. I
24 appreciate, as does the audience, your being here despite
25 the difficulties of the night and the distance and your

1 presenting this act and your experience under it.

2 I must say that neither I, nor I think anyone else
3 in this county government or I suppose the FOP seeks the
4 result that you mentioned in Philadelphia. We hope we can
5 always keep a good salary and a good force which we have
6 had in recent years.

7 I wanted to say that a lot of our questions are
8 reserved for the work session. You heard my announcement
9 on the work session. I don't know whether you will be able
10 to be here at such occasion, but we do have a more informal
11 exchange after giving everybody a chance to speak and raise
12 issues, go back and forth on these things, and to check out
13 different views of different issues and different experiences.
14 Can you be there?

15 MR. MARCHETTI: When will that be, sir?

16 PRESIDENT POTTER: It is scheduled for February
17 4. As I said earlier, February 4, Thursday, at 3 p.m. As
18 I said, because of the need to continue this hearing on January
19 25, we may not have all the preliminary staff work done for
20 that meeting. We are expecting to go forward with it as
21 of now. It would be well if you can be here, we would call
22 you as to the time, if any change occurs in that schedule.

23 MR. MARCHETTI: I will certainly try to schedule
24 myself so that I can be present.

25 PRESIDENT POTTER: I appreciate that. We will

1 try to insure that you can be here.

2 MR. MARCHETTI: Thank you, sir.

3 PRESIDENT POTTER: The next speaker is Phillip
4 Nichols of the State Office of the FOP. Phillip Nichols?
5 Not here. Perhaps he will be here on the 25th.

6 Next is Allen Katz from Lodge 35, FOP.

7 STATEMENT OF ALLEN KATZ, AND GEORGE DRIESEN,
8 LODGE 35, FRATERNAL ORDER OF POLICE

9 MR. DRIESEN: Mr. President, my name is George
10 Driesen. I am appearing with Mr. Katz on behalf of the FOP.
11 If we may, Mr. President, we would like to reserve our time
12 for the 25th for the reason that there are two very important
13 things that are missing tonight. The first is the bill,
14 as amended, which we have very carefully prepared to address.
15 And the second, if I may say so, is the County Council which
16 we have very thoroughly tried to prepare to address.

17 I hope, Mr. President, that you will convey to
18 the rest of the members of the Council the intensity of the
19 feeling of the police of this county that the voters have
20 spoken and the police expect that there will be a satisfactory
21 law as a result of what has occurred, and the testimony of
22 the men and women who have come out tonight in this inclement
23 weather to be sure that their message was heard, I hope will
24 be eloquently conveyed to the Council. We would like to
25 reserve our time, however, for the 25th.

1 PRESIDENT POTTER: Thank you, Mr. Driesen. Would
2 you spell it for the reporter?

3 MR. DRIESEN: Surely. D-r-i-e-s-e-n.

4 PRESIDENT POTTER: So that you expect to have 15
5 minutes plus eight, a total of 23 minutes. Is that right?

6 MR. DRIESEN: That is right.

7 PRESIDENT POTTER: Surely, that is all right. Let
8 me say that the absence of the Council members is principally
9 because they expected very few people to be here. Well,
10 last time it did blow up entirely, and the weather forecast
11 was pretty bad for tonight. Although it turns out not to
12 be so. Being an old farmer in Minnesota, it doesn't bother
13 me that much. But I appreciate your being here, and your
14 desire to be on on the 25th, of course we will put you on
15 at that time.

16 MR. DRIESEN: Thank you very much.

17 PRESIDENT POTTER: That brings us down to John
18 Fiscella.

19 STATEMENT OF JOHN P. FISCELLA,
20 CONSULTANT, LABOR RELATIONS

21 MR. FISCELLA: Mr. Potter. I am John Fiscella,
22 a private consultant on problems in public sector labor rela-
23 tions. For the past 18 years I have been actively involved
24 as a management and union consultant, lecturer, trainer and
25 practitioner of public sector labor relations. For the past

1 three years I have been a consultant to the United States
2 Department of Labor's Labor Management Services Agency, Divi-
3 sion of Public Employee Labor Relations.

4 After reviewing the recommendations of the County
5 Executive, I felt that I must comment briefly on at least
6 three sections of Bill 71-81. They are Section 33-78,
7 Employee Rights, Section 33-80, Collective Bargaining, and
8 Section 33-81, Impasse Procedure.

9 Let me start with Section 33-80, Collective Bar-
10 gaining, Articles (a) and (b) which speak to the subject of
11 the scope of bargaining to be permitted to the parties.

12 There is an old expression used by both private
13 and public labor relations personnel that states, "Anything,
14 Not Everything, Is Negotiable". Anything that impacts upon
15 the employee's ability to perform the assigned tasks and
16 carry out his or her responsibilities is negotiable. But
17 not everything involved in the management of an enterprise
18 is negotiable. The only exclusions to the scope should be
19 those topics over which management has no control or ability
20 to change or which do not impact on the employees' job.

21 I call your attention to 33-80, Article (c), numbers
22 6, 7 and 8. In the areas of suspension, discipline, discharge,
23 transfer, assignment, scheduling, retention, layoff and recall,
24 which have been declared outside the scope, the unit members
25 usually have a strongly felt interest.

1 In order to analyze the scope of bargaining, one
2 must look at both the number of issues included in the nego-
3 tiations as well as the degree of employee organization
4 influence on particular issues. Frequently, the parties
5 implicitly reach agreement on a tradeoff between the breadth
6 of negotiations and the depth or degree of influence on
7 particular issues. Some evidence exists that the public
8 sector manager presently opts for breadth rather than depth.
9 In fact, I am quoting from Paul Gerhart: "Management appears
10 willing to place no limit on the number of negotiable issues
11 so long as the actual power of the employee organization
12 is severely limited."

13 The scope of bargaining is an extremely important
14 aspect of the bargaining relationship. A very narrow scope
15 reduces the significance of collective bargaining. Effective
16 collective bargaining requires a reasonably wide range of
17 negotiable issues.

18 The common practice in the public sector is to
19 include the issues listed in 33-80(c)6, 7 and 8 within the
20 scope by joint agreement on the procedures to be utilized
21 by management prior to final determination by management.
22 In this way the issues are ventilated and the breadth of
23 the agreement is widened, but the depth is minimized. The
24 principles of just cause and due process are incorporated
25 in a set of equitable procedural requirements prior to decisions

1 by management that in some way might have a negative impact
2 on the unit members.

3 Next allow me to comment on Article 33-78, Section
4 (b). This confers on the recognized organization the exclusive
5 right to represent the employees for the purpose of collective
6 bargaining. When read together with Article 33-80, Section
7 (d), there appears to be some confusion. Article 33-80(d)
8 indicates that if the narrow scope proposed is approved then
9 management can engage in an end-run around the exclusive
10 representative on some of the most vital day to day job
11 related issues.

12 Historically, when this type of limited exclusivity
13 is given to the bargaining agent all types of special interest
14 groups vie for favor with the political and management power
15 structures seeking input. The harmonious labor relations
16 that this bill purports to establish is thereby destroyed.

17 Public managers and policy makers are best served
18 when they can tell any unit member or group of unit members
19 that are seeking special consideration of an issue to take
20 it to the table next year. This creates for the exclusive
21 representative the real responsibility to adhere to the
22 doctrine of fair representation. The limited exclusivity
23 proposed will do nothing but continue the present climate
24 of lobbying the power structured of change as well as create
25 internal problems for the limited exclusive representative.

1 In closing, let me address Section 33-81, the
2 Impasse Procedures. I have attached to my remarks a recent
3 study published by Dr. Arvid Anderson, Chairman, Office of
4 Collective Bargaining, City of New York.

5 I hope the conclusions reached by Dr. Anderson
6 will reduce some of the misunderstanding that most public
7 bodies express when binding interest arbitration is the
8 terminal step in a collective bargaining procedure. My only
9 concern is that the award, when taken in context with Section
10 33-80(h) is somewhat less than binding.

11 I would suggest that in the event that the Council
12 fails to fully fund a mutually agreed to contract or an award
13 made by an arbitrator that the parties be required to renego-
14 tiate rather than eliminate certain meaningful issues.

15 Thank you for your kind attention.

16 (Applause)

17 PRESIDENT POTTER: Mr. Fiscella, I appreciate your
18 bringing this for us, and the edition that you are submitting
19 for the record. Did you give a copy of your testimony to
20 the secretary?

21 MR. FISCELLA: Yes, sir.

22 PRESIDENT POTTER: Then we can Xerox them and pass
23 them around tomorrow. I appreciate that too.

24 I appreciate many of your points but I have a little
25 difficulty discussing them because I don't have the copy

1 before me, and you were going through some fairly intricate
2 provisions as well as explaining their results. Do you think
3 you could be at the work session and give us some more help
4 there where more questions could be --

5 MR. FISCELLA: If it is to be held on the fourth
6 of February, I am serving as an advocate on a triparte
7 binding arbitration panel.

8 PRESIDENT POTTER: So at that time you could not
9 be present.

10 MR. FISCELLA: No.

11 PRESIDENT POTTER: But if we have additional work
12 sessions, or if we change the work session we can get in
13 touch with you?

14 MR. FISCELLA: Yes, sir.

15 PRESIDENT POTTER: Is there a telephone number
16 on your testimony?

17 MR. FISCELLA: Yes.

18 PRESIDENT POTTER: Very good.

19 MR. FISCELLA: If I might just highlight Dr.
20 Arvid Anderson's study for you, which dealt with this review
21 of binding arbitration in the public sector.

22 PRESIDENT POTTER: If you would like to hit some
23 of the major points in that, we will it a minute or two and
24 it will be in the record for others to read.

25 MR. FISCELLA: There are 20 states right now that

1 have binding arbitration, and primarily for police, fire
2 and other public health and safety type employees. I would
3 say that his study has revealed that, number one, the utiliza-
4 tion of the binding arbitration has been less than anticipated,
5 ranging from a high at the time his study was done of 26
6 percent of the possible cases going to arbitration in
7 Pennsylvania, to a low of less than five percent in Iowa.
8 He attributes this high utilization of 26 percent, for instance,
9 in Pennsylvania to the fact there is no fact-finding inter-
10 mediary step between declaration of impasse, a quick attempt
11 at mediation, and then the ultimate step of arbitration.
12 Whereas in Iowa, the fact-finding procedure normally tends
13 to round off the rough edges of the disagreements and articulates
14 an agreement.

15 The cost factor that was alluded to by two of the
16 prior speakers is also of interest because his research finds
17 that the settlements awarded have been less than those in
18 the same areas, in the same geographical, same occupational
19 areas, have been less than those agreed to voluntarily in
20 the mutually agreed to contracts. So the awards made by
21 arbitrators in New York, Wisconsin, Pennsylvania, Iowa,
22 Oregon and so forth have tended to be slightly less, if not
23 greatly less than the awards made, or the agreements reached
24 mutually.

25 The other thing is, the narcotic effect. A lot

1 of people tend to think that there will be a narcotic effect
2 if the parties have as the ultimate step binding arbitration.
3 Therefore, no true bargaining will occur in the interim,
4 they will all wait for this expert with the black bag, as
5 was referred to by one speaker, who arrives in town and then
6 take their best shot.

7 The narcotic effect has proven not to be so, and
8 this is demonstrated by the low utilization of it in those
9 states in which it is not only possible but has been in
10 existence for more than four to five years. People do not
11 tend to wait for the man with the black bag. They tend to
12 try to resolve it mutually. People tend to like to live
13 under their own contracts rather than to have someone super-
14 impose an agreement on them.

15 There are other issues rather than economic that
16 are involved. The economic issue might be highlighted for
17 a week or two weeks, but there are other job rules and regu-
18 lations and requirements that he will set down that people
19 are going to have to live with for the next 365 or possibly
20 longer. So consequently people want to negotiate their own
21 agreement.

22 The other thing is the legality of the delegation
23 of powers. Every place that has authorized the utilization
24 of arbitration, every state, there has been a challenge and
25 the courts have ruled right down the line that there is no

1 illegal delegation of responsibility or public power to an
2 arbitrator. Because in most places, and in your legislation
3 also, it sets in some sort of criteria that must be adhered
4 to in making the award. Consequently he cannot with reckless
5 abandon come in and merely flip a coin and say, "I'll take
6 Package A or Package B", without any awareness of the conse-
7 quences to the tax structure and/or the other needs of the
8 public managers to operate the enterprise.

9 PRESIDENT POTTER: It fits in the usual criteria
10 of delegating legislative power to administrators if you
11 provide sufficient guidelines, it is not illegal.

12 MR. FISCELLA: Right.

13 PRESIDENT POTTER: That sounds like a fairly
14 extensive paper, and I trust it is. I certainly appreciate
15 that. If that highlights it, then we have something to work
16 from. We hope you can be at least at one of the work sessions
17 where we can discuss it.

18 MR. FISCELLA: Thank you for the invitation.

19 PRESIDENT POTTER: Thank you very much.

20 (Applause)

21 PRESIDENT POTTER: Our next speaker is Vincent
22 Foo, speaking for Montgomery Countil Council of Supporting
23 Services Employees.

1 STATEMENT OF VINCENT FOO, PRESIDENT,
2 MONTGOMERY COUNTY COUNCIL OF SUPPORTING
3 SERVICES EMPLOYEES/LOCAL 500

4 MR. FOO: Good evening, Mr. Potter. My name is
5 Vincent Foo. I am President of the Montgomery County Council
6 of Supporting Services Employees/Local 500, a union repre-
7 senting approximately 5,000 supporting service employees
8 of the Montgomery County Public Schools.

9 I am not here tonight to speak to the issues. I
10 believe that Mr. Driesen and Mr. Katz have worked with the
11 County Executive and have come up with a bill, with the amend-
12 ments that satisfy them and will take care of the collective
13 bargaining process for police officers.

14 I am here tonight to support the organized police
15 officers of Montgomery County in their efforts to achieve
16 true collective bargaining with the county.

17 Our organization, MCCSSE, asks that the legislation
18 before you, the Police Labor Relations Act, be acted upon
19 favorably by the Council. The citizens of this county
20 approved the referendum giving police officers the right
21 to collective bargaining. We believe it has taken much too
22 long to carry out the wishes of the voters. We urge you
23 to approve this legislation.

24 Thank you.

25 (Applause)

1 PRESIDENT POTTER: Thank you, Mr. Foo. I think
2 the Council feels too that it has taken quite a while, and
3 we would like to shorten. We hope we can act expeditiously
4 on it.

5 Let me say that as to the issues and the revisions
6 in the bill which we received just today I think, we look
7 forward to the next session to have those changes brought
8 before us, explained and discussed so that we will deal with
9 on the 25th more extensively.

10 I appreciate your being here to support the basic
11 principle. We enjoyed working with you for a long time even
12 though we are not the bargaining agent.

13 MR. FOO: I feel there is a lot of discussion on
14 the agency shop issue. As you know, we have had agency shop
15 since 1978. I would be glad to speak to that at the work
16 session if you would like.

17 PRESIDENT POTTER: If doubts come up about that,
18 or that is one of the issues, we would appreciate your being
19 there to mention it and explain the experience you have had.
20 Thank you very much.

21 Are there any other of the listed speakers here
22 this evening?

23 (No response)

24 PRESIDENT POTTER: If not, we will hear the
25 Executive and the consultant, Mr. Hillman, and the Local

1 Lodge 35 FOP presentation on the 25th, together with I
2 think it is two other speakers. So until 9 p.m., Monday,
3 January 25, good night, and I will see you then.

4 (Whereupon, at 9:05 p.m., the hearing was
5 adjourned, to reconvene at 9:00 p.m., Monday, January 25, 1982.)

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REPORTER'S CERTIFICATE

DOCKET NUMBER:


CASE TITLE: Bill 71-81, Collective Bargaining, Police
Officers

HEARING DATE: January 14, 1982

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence
herein are contained fully and accurately on the tapes and
notes reported by me at the hearing in the above case before
Montgomery County Council
and that this is a true and correct transcript of the same.

Date: January 11, 1982



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